

# IDAHO ADMINISTRATIVE BULLETIN

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April 4, 2007 -- Volume 07-4

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# Preface

*The Idaho Administrative Bulletin is published once each month by the Department of Administration, Office of the Administrative Rules Coordinator, pursuant to Section 67-5203, Idaho Code. The Bulletin is a monthly compilation of all administrative rule-making documents in Idaho. The Bulletin publishes the official rulemaking notices and administrative rule text of state agency rulemakings and other official documents as necessary.*

*State agencies are required to provide public notice of rulemaking activity and invite public input. The public receives notice of rulemaking activity through the Idaho Administrative Bulletin and the Legal Notice published monthly in local newspapers. The Legal Notice provides reasonable opportunity for public input, either oral or written, which may be presented to the agency within the time and manner specified in the Rulemaking Notice published in the Bulletin. After the comment period closes, the agency considers fully all information submitted in regard to the rule. Comment periods are not provided in temporary or final rule-making activities.*

## **CITATION TO THE IDAHO ADMINISTRATIVE BULLETIN**

*The Bulletin is cited by year and issue number. For example, Bulletin 06-1 refers to the first Bulletin issued in calendar year 2006; Bulletin 07-1 refers to the first Bulletin issued in calendar year 2007. Volume numbers, which proceed from 1 to 12 in a given year, correspond to the months of publication, i.e.; Volume No. 07-1 refers to January 2007; Volume No. 07-2 refers to February 2007; and so forth. Example: The Bulletin published in January of 2007 is cited as Volume 07-1. The December 2006 Bulletin is cited as Volume 06-12.*

## **RELATIONSHIP TO THE IDAHO ADMINISTRATIVE CODE**

*The Idaho Administrative Code is published once a year and is a compilation or supplemental compilation of all final and enforceable administrative rules in effect in Idaho. In an effort to provide the reader with current, enforceable rules, temporary rules are also published in the Administrative Code. Temporary rules and final rules approved by the legislature during the legislative session, and published in the monthly Idaho Administrative Bulletin, supplement the Administrative Code. Negotiated, proposed, and pending rules are only published in the Bulletin and **not** printed in the Administrative Code.*

*To determine if a particular rule remains in effect, or to determine if a change has occurred, the reader should refer to the **Cumulative Rulemaking Index of Idaho Administrative Rules**, printed in each Bulletin.*

## **TYPES OF RULEMAKINGS PUBLISHED IN THE ADMINISTRATIVE BULLETIN**

*The state of Idaho administrative rulemaking process, governed by the Administrative Procedure Act, Title 67, Chapter 52, Idaho Code, comprises five distinct activities: negotiated, proposed, temporary, pending and final rulemaking. Not all rulemakings involve all five. At a minimum, a rulemaking includes proposed, pending and final rulemaking. Many rules are adopted as temporary rules when they meet the required statutory criteria and agencies often engage in negotiated rulemaking at the beginning of the process to facilitate consensus building in controversial or complex rulemakings. In the majority of cases, the process begins with proposed rulemaking and ends with the final rulemaking. The following is a brief explanation of each type of administrative rule.*

### **NEGOTIATED RULEMAKING**

*Negotiated rulemaking is a process in which all interested parties and the agency seek consensus on the content of a rule. Agencies are encouraged, and in some cases required, to engage in this rulemaking activity whenever it is feasible to do so. Publication of a "Notice of Intent to Promulgate" a rule in the Administrative Bulletin by the agency is optional. This process should result in the formulation of a proposed and/or temporary rule.*

### ***PROPOSED RULEMAKING***

*A proposed rulemaking is an action by an agency wherein the agency is proposing to amend or repeal an existing rule or to adopt a new rule. Prior to the adoption, amendment, or repeal of a rule, the agency must publish a "Notice of Proposed Rulemaking" in the Bulletin. This notice must include:*

- a) the specific statutory authority (from Idaho Code) for the rulemaking including a citation to a specific federal statute or regulation if that is the basis of authority or requirement for the rulemaking;*
- b) a statement in nontechnical language of the substance of the proposed rule, including a specific description of any fee or charge imposed or increased;*
- c) the text of the proposed rule prepared in legislative format;*
- d) the location, date, and time of any public hearings the agency intends to hold on the proposed rule;*
- e) the manner in which persons may make written comments on the proposed rule, including the name and address of a person in the agency to whom comments on the proposal may be sent;*
- f) the manner in which persons may request an opportunity for an oral presentation as provided in Section 67-5222, Idaho Code; and*
- g) the deadline for public (written) comments on the proposed rule.*

*As stated, the text of the proposed rule must be published in the Bulletin. After meeting the statutory rulemaking criteria for a proposed rule, the agency may proceed to the pending rule stage. A proposed rule does not have an assigned effective date unless published in conjunction with a temporary rule. An agency may vacate a proposed rulemaking if it decides not to proceed further with the promulgation process.*

### ***TEMPORARY RULEMAKING***

*Temporary rules may be adopted only when the governor finds that it is necessary for:*

- a) protection of the public health, safety, or welfare; or*
- b) compliance with deadlines in amendments to governing law or federal programs; or*
- c) conferring a benefit;*

*If a rulemaking meets any one or all of the above requirements, a rule may become effective before it has been submitted to the legislature for review and the agency may proceed and adopt a temporary rule. However, a temporary rule that imposes a fee or charge may be adopted only if the Governor finds that the fee or charge is necessary to avoid an immediate danger which justifies the imposition of the fee or charge.*

*A temporary rule expires at the conclusion of the next succeeding regular legislative session unless the rule is approved, amended, or modified by concurrent resolution or when the rule has been replaced by a final rule.*

*State law requires that the text of both a proposed rule and a temporary rule be published in the Administrative Bulletin. In cases where the text of the temporary rule is the same as the proposed rule, the rulemaking can be done concurrently as a proposed/temporary rule. Combining the rulemaking allows for a single publication of the text.*

*An agency may, at any time, rescind a temporary rule that has been adopted and is in effect. If the temporary rule is being replaced by a new temporary rule or if it has been published concurrently with a proposed rulemaking that is being vacated, the agency, in most instances, should rescind the temporary rule.*

### **PENDING RULEMAKING**

*A pending rule is a rule that has been adopted by an agency under regular rulemaking procedures and remains subject to legislative review before it becomes a final, enforceable rule.*

*When a pending rule is published in the Bulletin, the agency is required to include certain information in the "Notice of Pending Rulemaking". This includes:*

- a) a statement giving the reasons for adopting the rule;*
- b) a statement of any change between the text of the proposed rule and the pending rule with an explanation of the reasons for any changes;*
- c) the date the pending rule will become final and effective;*
- d) an identification of any portion of the rule imposing or increasing a fee or charge.*

*Agencies are required to republish the text of the rule when substantive changes have been made to the proposed rule. An agency may adopt a pending rule that varies in content from that which was originally proposed if the subject matter of the rule remains the same, the pending rule change is a logical outgrowth of the proposed rule, and the original notice was written so as to assure that members of the public were reasonably notified of the subject. It is not always necessary to republish all the text of the pending rule. With the permission of the Rules Coordinator, only the Section(s) that have changed from the proposed text are republished. If no changes have been made to the previously published text, it is not required to republish the text again and only the "Notice of Pending Rulemaking" is published.*

### **FINAL RULEMAKING**

*A final rule is a rule that has been adopted by an agency under the regular rulemaking procedures and is in effect and enforceable.*

*No pending rule adopted by an agency will become final and effective until it has been submitted to the legislature for review. Where the legislature finds that an agency has violated the legislative intent of the statute under which the rule was made, a concurrent resolution may be adopted to reject the rulemaking or any part thereof. A "Notice of Final Rule" must be published in the Bulletin for any rule that is rejected, amended, or modified by the legislature showing the changes made. A rule reviewed by the legislature and not rejected, amended or modified becomes final with no further legislative action. No rule shall become final and effective before the conclusion of the regular or special legislative session at which the rule was submitted for review. However, a rule that is final and effective may be applied retroactively, as provided in the rule.*

### **AVAILABILITY OF THE ADMINISTRATIVE CODE AND BULLETIN**

*The Idaho Administrative Code and all monthly Bulletins are available for viewing and use by the public in all 44 county law libraries, state university and college and community college libraries, the state law library, the state library, the Public Libraries in Boise, Pocatello, Idaho Falls, Twin Falls, Lewiston and East Bonner County Library.*

## **SUBSCRIPTIONS AND DISTRIBUTION**

*For subscription information and costs of publications, please contact the Department of Administration, Office of the Administrative Rules Coordinator, 650 W. State Street, Room 100, Boise, Idaho 83720-0306, telephone (208) 332-1820.*

*The **Idaho Administrative Bulletin** is an official monthly publication of the State of Idaho. Yearly subscriptions or individual copies are available for purchase.*

*The **Idaho Administrative Code**, is an annual compilation or supplemental compilation of all final and enforceable temporary administrative rules and includes a table of contents, reference guides, and a subject index.*

***Individual Rule Chapters** and **Individual RuleMaking Dockets**, are specific portions of the Bulletin and Administrative Code produced on demand.*

***Internet Access** - The Administrative Code and Administrative Bulletin are available on the Internet at the following address: <http://adm.idaho.gov/adminrules/>*

## **HOW TO USE THE IDAHO ADMINISTRATIVE BULLETIN**

*Rulemaking documents produced by state agencies and published in the **Idaho Administrative Bulletin** are organized by a numbering system. Each state agency has a two-digit identification code number known as the "**IDAPA**" number. (The "**IDAPA**" Codes are listed in the alphabetical/numerical index at the end of this Preface.) Within each agency there are divisions or departments to which a two-digit "**TITLE**" number is assigned. There are "**CHAPTER**" numbers assigned within the Title and the rule text is divided among major sections with a number of subsections. An example IDAPA number is as follows:*

### **IDAPA 38.05.01.200.02.c.ii.**

*"**IDAPA**" refers to Administrative Rules in general that are subject to the Administrative Procedures Act and are required by this act to be published in the Idaho Administrative Code and the Idaho Administrative Bulletin.*

*"**38.**" refers to the Idaho Department of Administration*

*"**05.**" refers to Title 05, which is the Department of Administrations's Division of Purchasing*

*"**01.**" refers to Chapter 01 of Title 05, "Rules of the Division of Purchasing"*

*"**200.**" refers to Major Section 200, "Content of the Invitation to Bid"*

*"**02.**" refers to Subsection 200.02.*

*"**c.**" refers to Subsection 200.02.c.*

*"**ii.**" refers to Subsection 200.02.c.ii.*

## DOCKET NUMBERING SYSTEM

Internally, the Bulletin is organized sequentially using a rule docketing system. All rulemaking actions (documents) are assigned a "DOCKET NUMBER." The "Docket Number" is a series of numbers separated by a hyphen "-", (38-0501-0701). The docket numbers are published sequentially by IDAPA designation (e.g. the two-digit agency code). The following example is a breakdown of a typical rule docket number:

### "DOCKET NO. 38-0501-0701"

"38-" denotes the agency's IDAPA number; in this case the Department of Administration.

"0501-" refers to the TITLE AND CHAPTER numbers of the agency rule being promulgated; in this case the Division of Purchasing (TITLE 05), Rules of the Division of Purchasing (Chapter 01).

"0701" denotes the year and sequential order of the docket being published; in this case the numbers refer to the first rule-making action published in calendar year 2007. A subsequent rulemaking on this same rule chapter in calendar year 2007 would be designated as "0702". The docket number in this scenario would be 38-0501-0702.

Within each Docket, only the affected sections of chapters are printed. (See **Sections Affected Index** in each Bulletin for a listing of these.) The individual sections affected are printed in the Bulletin sequentially (e.g. Section "200" appears before Section "345" and so on). Whenever the sequence of the numbering is broken the following statement will appear:

### (BREAK IN CONTINUITY OF SECTIONS)

## INTERNAL AND EXTERNAL CITATIONS TO ADMINISTRATIVE RULES IN THE CODE AND BULLETIN

When making a citation to another Section or Subsection of a rule that is part of the same rule, a typical internal citation may appear as follows:

**"...as found in Section 201 of this rule." OR "...in accordance with Subsection 201.06.c. of this rule."**

The citation may also include the IDAPA, Title, or Chapter number, as follows"

**"...in accordance with IDAPA 38.05.01.201..."**

"38" denotes the IDAPA number of the agency.

"05" denotes the TITLE number of the rule.

"01" denotes the Chapter number of the rule.

"201" denotes the main Section number of the rule to which the citation refers.

Citations made within a rule to a different rule chapter (external citation) should also include the name of the Department and the name of the rule chapter being referenced, as well as the IDAPA, Title, and Chapter numbers. The following is a typical example of an external citation to another rule chapter:

**"...as outlined in the Rules of the Department of Administration, IDAPA 38.04.04, "Rules Governing Capitol Mall Parking."**

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2007**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
07-1	January 2007	<b>*November 15, 2006</b>	January 3, 2007	January 24, 2007
07-2	February 2007	January 5, 2007	February 7, 2007	February 28, 2007
07-3	March 2007	February 2, 2007	March 7, 2007	March 28, 2007
07-4	April 2007	March 2, 2007	April 4, 2007	April 26, 2007
07-5	May 2007	April 6, 2007	May 2, 2007	May 24, 2007
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07-10	October 2007	<b>**August 24, 2007</b>	October 3, 2007	October 25, 2007
07-11	November 2007	October 5, 2007	November 7, 2007	November 22, 2007
07-12	December 2007	November 2, 2007	December 5, 2007	December 27, 2006

**BULLETIN PUBLICATION SCHEDULE FOR CALENDAR YEAR 2008**

Vol. No.	Monthly Issue of Bulletin	Closing Date for Agency Filing	Publication Date	21-day Comment Period End Date
08-1	January 2008	<b>*November 14, 2007</b>	January 2, 2008	January 23, 2008
08-2	February 2008	January 4, 2008	February 6, 2008	February 27, 2008
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08-6	June 2008	May 2, 2008	June 4, 2008	June 25, 2008
08-7	July 2008	May 30, 2008	July 2, 2008	July 22, 2008
08-8	August 2008	July 3, 2008	August 6, 2008	August 27, 2008
08-9	September 2008	August 1, 2008	September 3, 2008	September 24, 2008
08-10	October 2008	<b>**August 20, 2008</b>	October 1, 2008	October 22, 2008
08-11	November 2008	October 3, 2008	November 5, 2008	November 26, 2008
08-12	December 2008	October 31, 2008	December 3, 2008	December 24, 2006

***\*Last day to submit proposed rulemaking before moratorium begins and last day to submit pending rules to be reviewed by the legislature.***

***\*\*Last day to submit proposed rules in order to complete rulemaking for review by legislature.***

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<b>IDAPA 42</b>	<b>Wheat Commission</b>	<b>VOLUME 8</b>

# IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE

## 16.03.10 - MEDICAID ENHANCED PLAN BENEFITS

DOCKET NO. 16-0310-0602

### NOTICE OF RULEMAKING - FINAL RULE

**AUTHORITY:** In compliance with Sections 67-5224 and 67-5291, Idaho Code, notice is hereby given that the legislature has taken action by concurrent resolution on this rulemaking under Docket No. 16-0310-0602. This agency action for this final rulemaking is authorized pursuant to Title 56, Chapter 2, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is a concise explanatory statement of the reasons for adopting the final rule and a statement of any change between the text of the pending rule and text of the final rule with an explanation for any changes.

After review by the 2007 Legislature, Senate Concurrent Resolution No. 112 amended Docket No. 16-0310-0602, "Medicaid Enhanced Plan Benefits," by deleting two subsections of the rule that did not meet legislative intent. In accordance with the concurrent resolution the following subsections have been removed from the final rule:

Subsection 112.02.d. - Eligibility Criteria for Children  
Subsection 112.03.a. - Eligibility Criteria for Adults

Only the text of Section 112 is being reprinted here as affected by SCR 112. The remainder of Docket 16-0310-0602 that were not amended by SCR 112 are not being reprinted with this Notice of Final Rule.

The original text of the proposed rule was published in the August 2, 2006 Idaho Administrative Bulletin, Vol. 06-8, pages 286 through 466. The pending rule was published in the January 7, 2007 Idaho Administrative Bulletin, Vol. 07-1, pages 154 through 199.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning this final rule, contact Pam Mason at (208) 364-1863.

DATED this 5th day of March, 2007.

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THE FOLLOWING IS THE FINAL RULE TEXT FOR DOCKET 16-0310-0602

#### *Subsection 112 (Entire Section)*

**112. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - PARTICIPANT ELIGIBILITY.**  
In order to qualify for Enhanced Outpatient Mental Health Services, a participant must obtain a Comprehensive

Assessment as described in Section 113 of these rules. The comprehensive assessment for PSR, Partial Care, and Psychotherapy must provide documentation of the medical necessity for each service to be provided. (3-21-07)

**01. General Participant Criteria.** In order for a participant to be eligible for Enhanced Outpatient Mental Health services, the following criteria must be met and documented: (3-21-07)

- a. Other services have failed or are not appropriate for the clinical needs of the participant. (3-21-07)
- b. For each participant, the services can reasonably be expected to improve the participant's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced. (3-21-07)
- c. Participants identified in the list below are disqualified from participating in Enhanced Outpatient Mental Health services: (3-21-07)
  - i. Persons at immediate risk of self-harm or harm to others who cannot be stabilized; (3-21-07)
  - ii. Persons needing more restrictive care or inpatient care; and (3-21-07)
  - iii. Persons who have not fulfilled the requirements of Subsections 112.02 or 112.03 of these rules. (3-21-07)

**02. Eligibility Criteria for Children.** Individuals under the age of eighteen (18) who have a serious emotional disturbance (SED). The following definition of the SED target population is based on the definition of SED found in the Children's Mental Health Services Act, Section 16-2403, Idaho Code. (3-21-07)

- a. Presence of an emotional or behavioral disorder, according to the DSM-IV-TR or subsequent revisions to the DSM, which results in a serious disability; and (3-21-07)
- b. Requires sustained treatment interventions; and (3-21-07)
- c. Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (3-21-07)

~~d. The disorder is considered to be a serious disability if it causes substantial impairment in functioning. Functional impairment must be assessed using the Child and Adolescent Functional Assessment Scale/ Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). Substantial impairment requires a full eight (8) scale score of eighty (80) or higher on the CAFAS or a full seven (7) scale score of eighty (80) or higher on the PECFAS with "moderate" impairment in at least one (1) of the following three (3) scales: (7-1-06)F~~

- ~~i. Self-Harmful Behavior; (7-1-06)F~~
- ~~ii. Moods/Emotions; or (7-1-06)F~~
- ~~iii. Thinking. (7-1-06)F~~

~~ed.~~ A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-21-07)

**03. Eligibility Criteria for Adults.** Individuals eighteen (18) years or older who have a severe and persistent mental illness (SMPI). The following criteria are required to be a member of the target population based on the guidelines taken from the Federal Register under Section 1912(c) of the Public Health Services Act and as amended by Public Law 102-321 "adults with a serious mental illness." (3-21-07)

~~a. The individual must have a diagnosis under DSM-IV-TR or subsequent revisions to the DSM, of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder recurrent severe, Delusional Disorder, or Borderline Personality Disorder. The only NOS diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a more conclusive diagnosis; and~~

~~(7-1-06)F~~

**b2.** The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following areas on either a continuous or an intermittent (at least once per year) basis: (3-21-07)

- i. Vocational/educational; (3-21-07)
- ii. Financial; (3-21-07)
- iii. Social relationships/support; (3-21-07)
- iv. Family; (3-21-07)
- v. Basic living skills; (3-21-07)
- vi. Housing; (3-21-07)
- vii. Community/legal; or (3-21-07)
- viii. Health/medical. (3-21-07)

**04. Participant Criteria Specific to Partial Care.** The comprehensive assessment must contain further documentation showing that the participant is presently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration which would interfere with the participant's ability to maintain current level of functioning. (3-21-07)

**05. Criteria Following Discharge For Psychiatric Hospitalization.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules are eligible for enhanced outpatient mental health clinic and PSR services. (3-21-07)

**a.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules, described in Subsection 112.02 of these rules for children, and in Subsection 112.03 of these rules for adults, are considered immediately eligible for PSR services for a period of at least one hundred and twenty (120) days following discharge from the hospital. The individualized treatment plan must be completed and submitted to the Department for prior authorization within ten (10) days of discharge. (3-21-07)

i. Up to two (2) hours of plan development hours may be for coordinating with hospital staff and others the participant chooses. These plan development hours are to be used for the development of an individualized treatment plan based solely on the participant's hospital records and past history. The provider agency does not have to perform any additional assessment nor does the participant need to qualify as described in Subsection 113.01 of these rules. (3-21-07)

ii. Upon submission of the completed individualized treatment plan to the Department or its designee, PSR services may be prior authorized for no more than one hundred twenty (120) days. For services to continue beyond one hundred twenty (120) days, the requirements of Section 129 of these rules must be met by the provider agency. (3-21-07)

**b.** A mental health clinic may serve a participant with Enhanced Plan services following a psychiatric hospitalization after a comprehensive assessment has been completed that has established the participant meets the criteria for Serious Emotional Disturbance (SED) or Severe and Persistent Mental Illness (SPMI). The mental health clinic provider does not need to submit form H0002 because the participant is already in the Enhanced Plan. (3-21-07)

# **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

## **16.03.10 - MEDICAID ENHANCED PLAN BENEFITS**

**DOCKET NO. 16-0310-0702**

### **NOTICE OF RULEMAKING - TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is July 1, 2006.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Sections 56-202(b), and 56-250 through 56-257, Idaho Code.

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

These rules are being amended in response to 2007 legislation which rejected certain subsections of rules relating to eligibility criteria for mental health services for children and adults. This rule change establishes eligibility criteria for the Enhanced Plan mental health services to facilitate the appropriate placement of qualified participants with services that match their health needs. The following rule changes are being made:

1) To be eligible to receive Enhanced Plan mental health services for psychotherapy, adults must meet the eligibility criteria of "serious mental illness," as defined in federal regulations.

2) Children must meet the eligibility criteria of "serious emotional disturbance," as defined in Section 16-2403, Idaho Code.

3) When determining whether an individual meets the diagnostic and functional eligibility criteria for Enhanced Plan mental health services for psychotherapy, the Diagnostic and Statistical Manual of Mental Disorders, 4th Edition, Text Revision (DSM-IV-R) will be used for both children and adults along with a comprehensive assessment.

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section(s) 67-5226(1)(a) and (c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate for the following reasons:

The eligibility criteria for Medicaid Enhanced Plan Benefits for mental health clinics, psychosocial rehabilitation, and partial care were amended by the 2007 Legislature. To keep benefits and services available to individuals requiring these types of services, a temporary rule is needed that confers this benefit and protects their health and welfare.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

There is no anticipated fiscal impact as this rule conforms the eligibility criteria with the 2006 House Concurrent Resolution 48. Current budget appropriations for these services were based on this legislation.

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Pat Guidry, (208) 364-1813.

DATED this 22nd day of February, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
450 West State Street - 10th Floor  
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kovachs@dhw.idaho.gov e-mail

THE FOLLOWING IS THE TEXT FOR DOCKET 16-0310-0702

**112. ENHANCED OUTPATIENT MENTAL HEALTH SERVICES - PARTICIPANT ELIGIBILITY.**

~~In order~~ To qualify for Enhanced Outpatient Mental Health Services, a participant must obtain a Comprehensive Assessment as described in Section 113 of these rules. The comprehensive assessment for PSR, Partial Care, and Psychotherapy must provide include documentation of the medical necessity for each service to be provided. For partial care services, the comprehensive assessment must also contain documentation that shows the participant is currently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration that would interfere with the participant's ability to maintain his current level of functioning. (3-21-07)(7-1-06)T

**01. General Participant Criteria.** In order for a participant to be eligible for Enhanced Outpatient Mental Health services, the following criteria must be met and documented: (3-21-07)

a. Other services have failed or are not appropriate for the clinical needs of the participant. (3-21-07)

b. ~~For each participant,~~ The services can reasonably be expected to improve the participant's condition or prevent further regression so that the current level of care is no longer necessary or may be reduced. (3-21-07)(7-1-06)T

c. Participants identified in ~~the list below are disqualified from participating~~ Subsections 112.01.c.i. through 112.01.c.iii. of this rule cannot participate in Enhanced Outpatient Mental Health services: (3-21-07)(7-1-06)T

i. ~~Persons~~ Participants at immediate risk of self-harm or harm to others who cannot be stabilized; (3-21-07)(7-1-06)T

ii. ~~Persons~~ Participants needing more restrictive care or inpatient care; and (3-21-07)(7-1-06)T

iii. ~~Persons~~ Participants who have not fulfilled the requirements of Subsections 112.02 or 112.03 of these rules. (3-21-07)(7-1-06)T

**02. Eligibility Criteria for Children.** ~~Individuals~~ To be eligible for services, a participant under the age of eighteen (18) ~~who must~~ have a serious emotional disturbance (SED). The following definition of the SED target population is based on the definition of SED found in the Children's Mental Health Services Act, Section 16-2403, Idaho Code. (3-21-07)(7-1-06)T

a. Presence of an emotional or behavioral disorder, according to the DSM-IV-TR ~~or subsequent revisions to the DSM,~~ which results in a serious disability; and (3-21-07)(7-1-06)T

b. Requires sustained treatment interventions; and (3-21-07)

c. Causes the child's functioning to be impaired in thought, perception, affect, or behavior. (3-21-07)

d. A substance abuse disorder, or conduct disorder, or developmental disorder, alone, does not constitute a serious emotional disturbance, although one (1) or more of these conditions may co-exist with serious emotional disturbance. (3-21-07)

**03. Eligibility Criteria for Adults.** ~~Individuals~~ To be eligible for services, a participant must be eighteen (18) years or older ~~who and~~ have a ~~severe and persistent~~ serious mental illness (SMPI) as defined in Volume 58 of the Federal Register, 29422-02, June 24, 1999. The following criteria are required to be a member of the target population based on the guidelines taken from the Federal Register under Section 1912(c) of the Public Health Services Act and as amended by Public Law 102-321 "adults with a serious mental illness." (3-21-07)(7-1-06)T

~~a. The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following areas on either a continuous or an intermittent (at least once per year) basis: (3-21-07)~~

- ~~i. Vocational/educational; (3-21-07)~~
- ~~ii. Financial; (3-21-07)~~
- ~~iii. Social relationships/support; (3-21-07)~~
- ~~iv. Family; (3-21-07)~~
- ~~v. Basic living skills; (3-21-07)~~
- ~~vi. Housing; (3-21-07)~~
- ~~vii. Community/legal; or (3-21-07)~~
- ~~viii. Health/medical. (3-21-07)~~

a. Currently or at any time during the year, he must have had a diagnosable mental, behavioral, or emotional disorder of sufficient duration to meet the diagnostic criteria specified in the DSM-IV-TR; and (7-1-06)T

b. He must have a functional impairment which substantially interferes with or limits one (1) or more major life activities. Functional impairment is defined as difficulties that substantially interfere with or limit role functioning with an individual's basic daily living skills, instrumental living skills, and functioning in social, family, vocational or educational contexts. An adult who met the functional impairment criteria during the past year without the benefit of treatment or other support services is considered to have a serious mental illness. (7-1-06)T

04. ~~Participant Criteria Specific to Partial Care. The comprehensive assessment must contain further documentation showing that the participant is presently at risk for an out-of-home placement, further clinical deterioration that would lead to an out-of-home placement, or further clinical deterioration which would interfere with the participant's ability to maintain current level of functioning.~~ Level of Care Criteria - Mental Health Clinics. To be eligible for mental health clinic services, a participant must meet the criteria as described in Subsections 112.04.a. and 112.04.b. of this rule. (3-21-07)(7-1-06)T

a. Children must meet Subsections 112.01 and 112.02 of this rule. (7-1-06)T

b. Adults must meet Subsections 112.01 and 112.03 of this rule. (7-1-06)T

05. Level of Care Criteria - Psychosocial Rehabilitation (PSR) Agencies and Partial Care Services for Children. To be eligible for the services of PSR or Partial Care, a child must meet the criteria of SED and Subsection 112.04.a. of this rule and must experience a substantial impairment in functioning. Functional impairment must be assessed using the Child and Adolescent Functional Assessment Scale/Preschool and Early Childhood Functional Assessment Scale (CAFAS/PECFAS). Substantial impairment requires a full eight (8) scale score of eighty (80) or higher with moderate impairment in at least one (1) of the following three (3) scales in Subsections 112.05.a. through 112.05.c. of this rule. (7-1-06)T

a. Self-harmful behavior; (7-1-06)T

b. Moods/Emotions; or (7-1-06)T

c. Thinking. (7-1-06)T

06. Level of Care Criteria - Psychosocial Rehabilitation (PSR) Agencies and Partial Care Services for Adults. To be eligible for services of PSR or Partial Care, an adult must meet the criteria of SMI and Subsection 112.04.b. of this rule. In addition, the following criteria in Subsections 112.06.a. and 112.06.b. of this rule

must be met. (7-1-06)T

**a.** The participant must have a diagnosis under DSM-IV-TR, of Schizophrenia, Schizoaffective Disorder, Bipolar I Disorder, Bipolar II Disorder, Major Depressive Disorder Recurrent Severe, Delusional Disorder, or Borderline Personality Disorder. The only Not Otherwise Specified (NOS) diagnosis included is Psychotic Disorder NOS for a maximum of one hundred twenty (120) days without a conclusive diagnosis; and (7-1-06)T

**b.** The psychiatric disorder must be of sufficient severity to cause a substantial disturbance in role performance or coping skills in at least two (2) of the following areas in Subsection 112.05.b.i. through 112.05.b.viii. of this rule on either a continuous or an intermittent, at least once per year, basis: (7-1-06)T

- i. Vocational/educational; (7-1-06)T
- ii. Financial; (7-1-06)T
- iii. Social relationships/support; (7-1-06)T
- iv. Family; (7-1-06)T
- v. Basic living skills; (7-1-06)T
- vi. Housing; (7-1-06)T
- vii. Community/legal; or (7-1-06)T
- viii. Health/medical. (7-1-06)T

**057. Criteria Following Discharge For Psychiatric Hospitalization.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules are eligible for enhanced outpatient mental health clinic and PSR services. (3-21-07)

**a.** Children and adults discharged from psychiatric hospitalization and who meet the diagnostic criteria of the target population in these rules, described in Subsection 112.02 of ~~these~~ this rules for children, and in Subsection 112.03 of ~~these~~ this rules for adults, are considered immediately eligible for PSR services for a period of at least one hundred and twenty (120) days following discharge from the hospital. The individualized treatment plan must be completed and submitted to the Department for prior authorization within ten (10) days of discharge. ~~(3-21-07)~~(7-1-06)T

i. Up to two (2) hours of plan development hours may be for coordinating with hospital staff and others the participant chooses. These plan development hours are to be used for the development of an individualized treatment plan based solely on the participant's hospital records and past history. The provider agency does not have to perform any additional assessment nor does the participant need to qualify as described in Subsection 113.01 of these rules. (3-21-07)

ii. Upon submission of the completed individualized treatment plan to the Department or its designee, PSR services may be prior authorized for no more than one hundred twenty (120) days. For services to continue beyond one hundred twenty (120) days, the requirements of Section 129 of these rules must be met by the provider agency. (3-21-07)

**b.** A mental health clinic may serve a participant with Enhanced Plan services following a psychiatric hospitalization after a comprehensive assessment has been completed, ~~that has~~ The assessment must establish that the participant meets the criteria for Serious Emotional Disturbance (SED) or Severe and Persistent Mental Illness (SPMI) as described in Subsections 112.01 through 112.06 of this rule, and is appropriate for the participant's age and level of care that is medically necessary. The mental health clinic provider does not need to submit form H0002 because the participant is already in the Enhanced Plan. ~~(3-21-07)~~(7-1-06)T

## **IDAPA 16 - DEPARTMENT OF HEALTH AND WELFARE**

### **16.03.17 - MEDICARE/MEDICAID COORDINATED PLAN BENEFITS**

#### **DOCKET NO. 16-0317-0701 (NEW CHAPTER)**

#### **NOTICE OF RULEMAKING - TEMPORARY RULE**

**EFFECTIVE DATE:** The effective date of the temporary rule is April 1, 2007.

**AUTHORITY:** In compliance with Sections 67-5226, Idaho Code, notice is hereby given this agency has adopted a temporary rule. The action is authorized pursuant to Section 56-202(b), Idaho Code; Sections 56-251(2)(c) and 56-255(4), Idaho Code; the Medicare Prescription Drug Improvement and Modernization Act of 2003, P.L. 108-173, Section 231; and HCR 49 (2006).

**DESCRIPTIVE SUMMARY:** The following is the required finding and concise statement of its supporting reasons for adopting a temporary rule:

The 2006 Legislature directed the Department to increase its coordination with Medicare as part of the overall strategy for improving Medicaid efficiency and saving Medicaid funds. HCR 49 encouraged the Department to coordinate with Medicare in financing prescription drug benefits and other Medicaid-covered services for individuals eligible for and enrolled in both Medicare and Medicaid (“dually eligible”).

This new chapter of rules implements the intent of HCR 49 and the corresponding benefit package approved by the Centers for Medicare/Medicaid Services (CMS) effective July 1, 2006, as part of Idaho's Medicaid Modernization plan. This benefit package coordinates and integrates benefits for individuals eligible for both Medicare and Medicaid. It is one of the three benefit packages that comprise Idaho's Medicaid Modernization plan. (The Basic and the Enhanced plans are the other two benefit packages.)

Individuals who opt into the Medicare/Medicaid Coordinated Plan will receive an integrated benefits program offered by a participating Medicare Advantage Organization (MAO). Medicaid will pay the premium for the integrated Medicare Advantage Plan\* offered by a participating MAO. The integrated Medicare Advantage Plan will cover some services usually covered by Medicaid such as: primary care case management, prescribed drugs not covered by Medicare Part D, and dentures.

\*Medicare Advantage Plans are health plans approved by Medicare but run by private companies referred to in this chapter as “MAOs.”

**TEMPORARY RULE JUSTIFICATION:** Pursuant to Section 67-5226(1)(c), Idaho Code, the Governor has found that temporary adoption of the rule is appropriate since it confers a benefit.

**FEE SUMMARY:** Pursuant to Section 67-5226(2), the Governor has found that the fee or charge being imposed or increased is justified and necessary to avoid immediate danger and the fee is described herein: N/A

**FISCAL IMPACT:** The following is a specific description, if applicable, of any fiscal impact on the state general fund greater than ten thousand dollars (\$10,000) during the fiscal year.

For SFY 2007, a total cost of \$128,000 is estimated for changes to Medicaid's automated system to support implementation of the coordinated plan benefit package. The cost to the State General Fund is estimated to be \$12,800.

It is estimated that implementation of this benefit package will result in a savings of approximately \$336,651 in SFY 2008, \$743,501 in SFY 2009, and \$1,231,526 in SFY 2010. No cost savings are anticipated for SFY 2007 because this benefit package will be implemented late in the fiscal year (April 2007).

**ASSISTANCE ON TECHNICAL QUESTIONS:** For assistance on technical questions concerning the temporary rule, contact Sheila Pugatch at (208) 364-1817.

DATED this 20th day of February, 2007.

Sherri Kovach, Program Supervisor  
DHW – Administrative Procedures Section  
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(208) 334-5564 phone; (208) 334-6558 fax  
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**THE FOLLOWING IS THE TEXT OF DOCKET NO. 16-0317-0701**

**IDAPA 16, TITLE 03, CHAPTER 17**

**16.03.17 - MEDICARE/MEDICAID COORDINATED PLAN BENEFITS**

**000. LEGAL AUTHORITY.**

The Department is authorized to promulgate these rules under Sections 56-202(b), 56-251(2)(c), and 56-255(4), Idaho Code, the Medicare Prescription Drug Improvement and Modernization Act of 2003, P.L. 108-173, Section 231, and Section 1937 of the Social Security Act. (4-1-07)T

**001. TITLE AND SCOPE.**

**01. Title.** The title of these rules is IDAPA 16.03.17, “Medicare/Medicaid Coordinated Plan Benefits.” (4-1-07)T

**02. Scope.** These rules cover the Medicaid benefit plan option that coordinates and integrates health plan benefits for individuals who are eligible for and enrolled in both Medicare and Medicaid. This package of benefits is referred to as the Medicare/Medicaid Coordinated Plan (MMCP). These rules cover eligibility, participant responsibility, general provider requirements, and the range of services covered under the MMCP. (4-1-07)T

**002. WRITTEN INTERPRETATIONS.**

In accordance with Section 67-5201(19)(b)(iv), Idaho Code, this agency may have written statements that pertain to the interpretations of the rules of this chapter. These documents are available for public inspection at the location identified under Subsection 005.06 of these rules and in accordance with Section 006 of these rules. (4-1-07)T

**003. ADMINISTRATIVE APPEALS.**

**01. Administrative Appeals for Medicaid-Only Services.** Administrative appeals to Medicaid are governed by provisions of IDAPA 16.05.03, “Rules Governing Contested Case Proceedings and Declaratory Rulings.” (4-1-07)T

**02. Medicare Advantage Organization Appeals and Grievance Processes.** Appeals and grievances arising from MMCP services provided by participating MAOs must be filed with the Medicare Advantage Organization that enrolled the participant in the MMCP. (4-1-07)T

**004. INCORPORATION BY REFERENCE.**

No documents have been incorporated by reference in these rules. (4-1-07)T

**005. OFFICE -- OFFICE HOURS -- MAILING ADDRESS -- STREET ADDRESS -- INTERNET WEBSITE.**

**01. Office Hours.** Office hours are 8 a.m. to 5 p.m., Mountain Time, Monday through Friday, except holidays designated by the State of Idaho. (4-1-07)T

**02. Mailing Address.** The mailing address for the business office is Idaho Department of Health and Welfare, P.O. Box 83720, Boise, Idaho 83720-0036. (4-1-07)T

**03. Street Address.** The business office of the Idaho Department of Health and Welfare is located at 450 West State Street, Boise, Idaho 83702. (4-1-07)T

**04. Telephone.** (208) 334-5500. (4-1-07)T

**05. Internet Website Address.** The website address is: <http://www.healthandwelfare.idaho.gov>. (4-1-07)T

**06. Division of Medicaid.** The Division of Medicaid is located at 3232 Elder Street, Boise, Idaho 83705; Phone: (208) 334-5747. (4-1-07)T

**006. CONFIDENTIALITY OF RECORDS AND PUBLIC RECORDS REQUEST.**

**01. Confidentiality of Records.** Information received by the Department is subject to the provisions of IDAPA 16.05.01, "Use and Disclosure of Department Records," for the following records. (4-1-07)T

**a.** A provider's reimbursement records. (4-1-07)T

**b.** An individual's records covered by these rules. (4-1-07)T

**02. Public Records.** The Department will comply with Sections 9-337 through 9-350, Idaho Code, when requests for the examination and copying of public records are made. Unless otherwise exempted, all public records in the custody of the Department are subject to disclosure. (4-1-07)T

**007. (RESERVED).**

**008. AUDIT, INVESTIGATION AND ENFORCEMENT.**

In addition to any actions specified in these rules, the Department may audit, investigate, and take enforcement action under the provisions of IDAPA 16.05.07, "The Investigation and Enforcement of Fraud, Abuse, and Misconduct." (4-1-07)T

**009. (RESERVED).**

**010. DEFINITIONS.**

For the purposes of this chapter of rules, the following definitions are used: (4-1-07)T

**01. Capitated Payment.** The amount paid to a Medicare Advantage Organization for Medicare/Medicaid Coordinated Plan services as expressed in a per member per month amount. (4-1-07)T

**02. Department.** The Idaho Department of Health and Welfare or a person authorized to act on behalf of the Department. (4-1-07)T

**03. Dual-Eligible.** Individuals who meet all the eligibility requirements under Section 100 of these rules. (4-1-07)T

**04. Evidence of Coverage.** The Medicare Advantage Plan contract the MAO has with the participant. This document explains the covered services, defines the Medicaid Advantage Plan obligations, and explains the participant's rights and responsibilities. (4-1-07)T

**05. Medicare.** Medicare is a federal health insurance program for people age sixty-five (65) or older,

people under age sixty-five (65) with certain disabilities, and people of all ages with End-Stage Renal Disease. It has three (3) types of coverage: Part A Hospital Insurance, Part B Medical Insurance, and Prescription Drug Coverage. It is administered under Title XVIII of the Social Security Act. (4-1-07)T

**06. Medicare Advantage Organizations (MAOs).** Insurance companies approved by the Centers for Medicare/Medicaid Services to offer Medicare Advantage Plans in accordance with Title XVIII, Part C, of the Social Security Act and 42 CFR, Part 422, and who are Medicaid providers authorized to enroll participants in the Medicare/Medicaid Coordinated Plan. (4-1-07)T

**07. Medicare Advantage Plan.** A health plan approved by Medicare but offered by a private company that contracts with Medicare to provide Medicare Part A, Part B, and Part D benefits. The Medicare Advantage Plan under this chapter is a special integrated plan offered by participating MAOs that includes the services listed under Section 301 of these rules. (4-1-07)T

**08. Medicare/Medicaid Coordinated Plan (MMCP).** Medical assistance in which Medicaid purchases services from an MAO and provides other Medicaid-only services covered under the Medicaid Enhanced Plan in accordance with these rules. (4-1-07)T

**09. Medicaid.** Idaho's Medical Assistance program administered under Title XIX of the Social Security Act. (4-1-07)T

**10. Medicaid Basic Plan.** The medical assistance benefits included under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (4-1-07)T

**11. Medicaid Enhanced Plan.** The medical assistance benefits included under IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits." (4-1-07)T

**12. Medical Assistance.** Payments made by Medicaid. (4-1-07)T

**GENERAL PARTICIPANT PROVISIONS  
(Sections 100 Through 199)**

**100. MEDICARE/MEDICAID COORDINATED PLAN (MMCP) - PARTICIPANT ELIGIBILITY.**  
To be eligible to select the MMCP, the participant must meet the following criteria. (4-1-07)T

**01. Medicare Eligibility.** The participant must be eligible for and enrolled in both Medicare Part A and Medicare Part B and must not have Medicare eligibility due to End-Stage Renal Disease (ESRD). (4-1-07)T

**02. Medicaid Eligibility.** The participant must be eligible for medical assistance under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)." The individual's Medicaid eligibility must not be based solely on the requirements found under IDAPA 16.03.05, "Rules Governing Eligibility for Aid to the Aged, Blind and Disabled (AABD)," Section 802, "Women Diagnosed With Breast or Cervical Cancer." (4-1-07)T

**03. Age.** The participant must be age twenty-one (21) or older. (4-1-07)T

**101. MEDICARE/MEDICAID COORDINATED PLAN - PARTICIPANT ENROLLMENT.**  
To receive services under the MMCP, the participant must select and enroll with an MAO. (4-1-07)T

**102. MEDICARE/MEDICAID COORDINATED PLAN - PARTICIPANT RESPONSIBILITIES.**  
Participants who select the MMCP must comply with the following requirements: (4-1-07)T

**01. Selecting the Medicare/Medicaid Coordinated Plan.** The participant must contact a participating MAO and request to sign up for the MMCP. Participation in the MMCP begins the month following the month the participant signs an application for the Medicare Advantage Plan that includes MAO-covered services listed under

Section 301 of these rules. (4-1-07)T

**02. Compliance with Medicare Advantage Organization Requirements.** The participant must comply with all of the requirements of the participating MAO, including the requirement to pay for services provided by out-of-network providers. Out-of-network providers are those who do not have a contract with the MAO with which the participant is enrolled. (4-1-07)T

**03. Notification to the Provider.** (4-1-07)T

**a.** The participant must present his Medicare Advantage card when seeking any of the services listed under Section 301 of these rules. (4-1-07)T

**b.** The participant must present his Medicaid card when seeking any of the Medicaid-covered services listed under Section 302 of these rules. (4-1-07)T

**04. Termination of the Medicare/Medicaid Coordinated Plan.** The participant can terminate his MMCP at any time. Coverage will continue until the end of the month in which the termination date falls. The participant will subsequently be automatically reenrolled in the Medicaid benefit plan, either Basic or Enhanced, in which they were initially enrolled. (4-1-07)T

**103. -- 199. (RESERVED).**

**GENERAL PROVIDER PROVISIONS  
(Sections 200 Through 299)**

**200. PROVIDER APPLICATION PROCESS.**

A prospective provider may apply for a provider number with the Department as described in IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 200. (4-1-07)T

**201. -- 204. (RESERVED).**

**205. AGREEMENTS WITH PROVIDERS.**

All provisions of IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 205, apply to providers of services under the MMCP. (4-1-07)T

**206. -- 211. (RESERVED).**

**210. CONDITIONS FOR PAYMENT.**

All provisions of IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Section 210, apply to providers of services under the MMCP. (4-1-07)T

**211. -- 299. (RESERVED).**

**COVERED SERVICES  
(Sections 300 Through 303)**

**300. MEDICARE/MEDICAID COORDINATED PLAN - COVERAGE AND LIMITATIONS.**

**01. MMCP-Covered Services.** The MMCP-covered services include the following: (4-1-07)T

**a.** MAO-Covered Services. Services covered by the MAO as listed under Section 301 of these rules. The MAO may limit or expand the scope of services as defined in the "Evidence of Coverage." (4-1-07)T

**b.** Medicaid-Only Services. Services listed under Section 302 of these rules provided by Medicaid providers that are not MAOs. (4-1-07)T

**02.** **Services Excluded from the MMCP.** Services not listed under Section 301 or under Section 302 of these rules are not covered under the MMCP. (4-1-07)T

**03.** **Premiums and Cost-Sharing.** The participant will not pay for any premiums or cost-sharing when covered under the MMCP, except as provided under Subsection 102.02 of these rules. (4-1-07)T

**301. MAO-COVERED SERVICES.**

Under the MMCP, an MAO must cover, at a minimum, the following services: (4-1-07)T

- 01. Inpatient Hospital Services.** (4-1-07)T
- 02. Outpatient Hospital Services.** (4-1-07)T
- 03. Emergency Room Services.** (4-1-07)T
- 04. Ambulatory Surgical Center Services.** (4-1-07)T
- 05. Physician Services.** (4-1-07)T
- 06. Other Practitioner Services (Nurse Practitioner, Nurse Midwife, Chiropractor, Podiatrist, Physician Assistant).** (4-1-07)T
- 07. Prevention Services (Adult Physicals, Screening Services).** (4-1-07)T
- 08. Laboratory and Radiological Services.** (4-1-07)T
- 09. Prescribed Drugs (Medicare-Covered Drugs).** (4-1-07)T
- 10. Family Planning Services.** (4-1-07)T
- 11. Inpatient Psychiatric Services.** (4-1-07)T
- 12. Outpatient Mental Health Services.** (4-1-07)T
- 13. Home Health Care.** (4-1-07)T
- 14. Therapy Services.** (4-1-07)T
- 15. Speech, Hearing and Language Services.** (4-1-07)T
- 16. Medical Equipment and Supplies.** (4-1-07)T
- 17. Prosthetic Devices.** (4-1-07)T
- 18. Vision Services.** (4-1-07)T
- 19. Dental Services.** (4-1-07)T
- 20. Primary Care Case Management.** (4-1-07)T
- 21. Prevention and Health Assistance Benefits.** (4-1-07)T
- 22. Medicare Part D Excluded Drugs Covered by Medicaid.** (4-1-07)T

- 23. **Specialized Medical Equipment and Supplies.** (4-1-07)T
- 24. **Dentures.** (4-1-07)T
- 25. **Rural Health Clinic Services.** (4-1-07)T
- 26. **Federally Qualified Health Center (FQHC) Services.** (4-1-07)T
- 27. **Indian Health Clinic Services.** (4-1-07)T

**302. MEDICAID-ONLY SERVICES.**

Medicaid will cover the following services only if the MAO's "Evidence of Coverage" does not cover them:

(4-1-07)T

**01. Psychosocial Rehabilitation (PSR).** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 123 through 146. (4-1-07)T

**02. Nursing Facility Services.** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 220 through 296. (4-1-07)T

**03. Personal Care Services (PCS).** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 300 through 308. (4-1-07)T

**04. Non-Emergency Transportation Services.** IDAPA 16.03.09, "Medicaid Basic Plan Benefits," Sections 870 and 875. (4-1-07)T

**05. Home and Community Based (HCBS) Waiver Services.** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 326 and 703. (4-1-07)T

**06. Intermediate Care Facility Services for the Mentally Retarded (ICF/MR).** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 581 through 632. (4-1-07)T

**07. Developmental Disability Agency (DDA) Services.** IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," Sections 650 through 656. (4-1-07)T

**303. MEDICARE/MEDICAID COORDINATED PLAN BENEFITS - PROVIDER REIMBURSEMENT.**

Each provider must apply for and be approved as a Medicaid provider under the MMCP before it can be reimbursed.

(4-1-07)T

**01. Medicaid-Only Service Providers.** Medicaid-only service providers are reimbursed according to the reimbursement methodology in IDAPA 16.03.10, "Medicaid Enhanced Plan Benefits," related to the Medicaid-only service. Medicaid-only service providers are also subject to the General Provider Provisions under IDAPA 16.03.09, "Medicaid Basic Plan Benefits." (4-1-07)T

**02. Medicare Advantage Organizations.** Each MAO will be paid a monthly per member per month (PMPM) rate that is defined in the Medicaid Provider Agreement. The MAO is responsible for submitting a monthly invoice to the Department in the Department-specified electronic format. This invoice must include the name of the Medicaid participant, the Medicaid ID number, and the time frame of coverage. The PMPM rate paid to the MAO includes the participant's Medicare premium, any cost-sharing required by the MAO, and the services listed under Section 301 of these rules. (4-1-07)T

**304. -- 999. (RESERVED).**

## IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY

DOCKET NO. 58-0000-0704

### NOTICE OF FINAL DECISION ON THE JACKS CREEK TMDL FOR THE BRUNEAU RIVER SUBBASIN (HUC 17050102)

**AUTHORITY:** In compliance with Section 39-3611, Idaho Code, notice is hereby given that this agency has issued a final decision on the Jacks Creek Aquaculture Total Maximum Daily Loads (TMDLs).

**DESCRIPTIVE SUMMARY:** The Department of Environmental Quality (DEQ) hereby gives notice of the final decision on the Jacks Creek TMDL for the Bruneau River Subbasin. The final decision may be appealed to the Board of Environmental Quality by initiating a contested case in accordance with Sections 39-107(5), 67-5240 et seq., Idaho Code, and IDAPA 58.01.23, "Rules of Administrative Procedure Before the Board of Environmental Quality." The petition initiating a contested case must be filed with the undersigned hearing coordinator within thirty-five (35) days of the publication date of this notice in the Idaho Administrative Bulletin.

The area covered by the Jacks Creek TMDL (Hydrologic Unit Code 17050102) addresses one (1) assessment unit needing revised waste load allocations to meet the load reductions required in the Bruneau River TMDL. The assessment unit contains three (3) TMDLs. DEQ has submitted these TMDLs to the U.S. Environmental Protection Agency for approval under the Clean Water Act.

**AVAILABILITY OF THE TMDL:** Electronic copy of the TMDLs can be obtained at [http://www.deq.idaho.gov/water/data\\_reports/surface\\_water/tmdls/bruneau\\_river/bruneau\\_river.cfm](http://www.deq.idaho.gov/water/data_reports/surface_water/tmdls/bruneau_river/bruneau_river.cfm) or by contacting Marti Bridges, TMDL Program Manager, 208-373-0382, [Marti.Bridges@deq.idaho.gov](mailto:Marti.Bridges@deq.idaho.gov).

Dated this 5th day of March, 2007.

Paula J. Wilson  
Hearing Coordinator  
Department of Environmental Quality  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[Paula.Wilson@deq.idaho.gov](mailto:Paula.Wilson@deq.idaho.gov)

# **IDAPA 58 - DEPARTMENT OF ENVIRONMENTAL QUALITY**

## **58.01.08 - IDAHO RULES FOR PUBLIC DRINKING WATER SYSTEMS**

**DOCKET NO. 58-0108-0701**

### **NOTICE OF RULEMAKING - NEGOTIATED RULEMAKING**

**AUTHORITY:** In compliance with Section 67-5220, Idaho Code, and IDAPA 58.01.23, Rules of Administrative Procedure Before the Board of Environmental Quality, Sections 810 through 815, notice is hereby given that this agency intends to promulgate a rule and desires public participation before publishing a proposed rule. This rulemaking action is authorized by Chapter 1, Title 39, Idaho Code, and Chapter 21, Title 37, Idaho Code.

**MEETING SCHEDULE:** Those interested in participating in the negotiated rulemaking process are encouraged to attend the following meetings. The meetings will take place simultaneously and will be connected by telephone. Additional meetings may be scheduled if necessary. For information regarding additional meetings, contact Tom John at [thomas.john@deq.idaho.gov](mailto:thomas.john@deq.idaho.gov), (208)373-0191.

**April 24, 2007, 10 a.m. to 3 p.m. MDT**

**Department of Environmental Quality, Conference Room B  
1410 N. Hilton, Boise, Idaho**

**Department of Environmental Quality, Large Conference Room  
900 N. Skyline, Suite B, Idaho Falls, Idaho**

**Department of Environmental Quality, Large Conference Room  
2110 Ironwood Parkway, Coeur d'Alene, Idaho**

**PRELIMINARY DRAFT:** A preliminary draft of the rule and an issue paper describing the special primacy requirements can be obtained at [http://www.deq.idaho.gov/rules/drinking\\_water/58\\_0108\\_0701\\_negotiated.cfm](http://www.deq.idaho.gov/rules/drinking_water/58_0108_0701_negotiated.cfm) or by contacting Paula Wilson at [paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov), (208)373-0418. The preliminary draft rule is for information purposes only. The issue paper covers the topics that will be considered during negotiations.

**DESCRIPTIVE SUMMARY:** The U.S. Environmental Protection Agency promulgated the Stage 2 Disinfectants and Disinfection Byproducts Rule on January 4, 2006, and the Long Term 2 Enhanced Surface Water Treatment Rule on January 5, 2006. These are national primary drinking water regulations. As a state that has primacy for administering the Safe Drinking Water Act, Idaho must adopt these rules within two years of promulgation. These federal regulations include special primacy requirements that provide limited flexibility to the states. Because the special primacy requirements are the only part of these regulations that allow the states interpretive discretion, the scope of this negotiated rulemaking is limited to the special primacy requirements and how those requirements should be applied in Idaho.

Stage 2 Disinfectants and Disinfection Byproducts Rule, 40 CFR Part 141, Subparts U and V: Requires public water systems that add a chemical disinfectant to their water to conduct distribution system evaluations aimed at identifying sites within the system that are subject to high levels of disinfection byproducts (DBP). These byproducts are formed when chemical disinfectants such as chlorine combine with naturally occurring organic matter in the water. Based upon the results of distribution system evaluation, systems are required to prepare and implement a revised DBP monitoring plan that will ensure more equitable protection of customers from these contaminants.

Long Term 2 Enhanced Surface Water Treatment Rule, 40 CFR Part 141, Subpart W: Requires systems that use surface water to monitor their source water in order to assess the occurrence of cryptosporidium, an important waterborne pathogen. Systems that find high levels of this organism in their source water will be required to provide additional treatment to ensure adequate removal and/or inactivation of cryptosporidium.

As a primacy agency, DEQ must adopt state rules that are no less stringent than the federal regulations. Under direction from the Idaho Legislature, DEQ must adopt state rules that are no more stringent than the federal regulations. To ensure that Idaho's rules will be neither more nor less stringent than the federal regulations, the preliminary draft rule incorporates by reference the necessary federal regulations and, therefore, is not subject to negotiation. However, DEQ is seeking input regarding the special primacy requirements. Drinking water system

owners and operators, developers, consultants, engineers, cities, counties, industry, drinking water professional organizations, and the public at large may be interested in participating in this rulemaking.

Upon conclusion of negotiations, DEQ intends to publish a proposed rule for public comment in the summer of 2007 and then present the final proposal to the Board of Environmental Quality for adoption of a pending rule in the fall of 2007. If adopted, the pending rule will be reviewed by the 2008 Idaho Legislature.

**ASSISTANCE ON TECHNICAL QUESTIONS AND SUBMISSION OF WRITTEN COMMENTS:** For assistance on questions concerning the negotiated rulemaking, contact Tom John at [thomas.john@deq.idaho.gov](mailto:thomas.john@deq.idaho.gov), (208)373-0191.

Anyone may submit written comments regarding this negotiated rulemaking by mail, fax or e-mail at the address below. DEQ will consider all written comments received by the undersigned on or before May 4, 2007. To receive subsequent drafts of the negotiated rule, and for information regarding submission of written comments on subsequent drafts, contact the undersigned.

Dated this 1<sup>st</sup> day of March, 2007.

Paula J. Wilson  
Environmental Quality Section  
Attorney General's Office  
1410 N. Hilton  
Boise, Idaho 83706-1255  
(208)373-0418/Fax No. (208)373-0481  
[paula.wilson@deq.idaho.gov](mailto:paula.wilson@deq.idaho.gov)

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# LEGAL NOTICE

## Summary of Proposed Rulemakings

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### **PUBLIC NOTICE OF INTENT TO PROPOSE OR PROMULGATE NEW OR CHANGED AGENCY RULES**

The following agencies of the state of Idaho have published the complete text and all related, pertinent information concerning their intent to change or make the following rules in the new issue of the state Administrative Bulletin.

**Because of the moratorium on proposed rulemaking during the legislative session, there are no proposed rules being promulgated or published in this month's Bulletin.**

Please refer to the Idaho Administrative Bulletin, **April 4, 2007, Volume 07-4** for notices and text of all rulemakings, public hearing schedules, Governor's executive orders, and agency contact names.

**Citizens of your county can view all issues of the Idaho Administrative Bulletin at the county law libraries.**

Copies of the Administrative Bulletin and other rules publications are available for purchase. For subscription information and ordering call (208) 332-1820 or write the Office of the Administrative Rules Coordinator, Department of Administration, 650 W. State St., Room 100, Boise, Idaho 83720. Visa and Mastercard accepted on purchases over \$50.

The Idaho Administrative Bulletin and Administrative Code are available on the Internet at the following address:  
**<http://adm.idaho.gov/adminrules/>**

CUMULATIVE RULEMAKING INDEX OF IDAHO ADMINISTRATIVE RULES

**FOR THE ABOVE LINK TO WORK YOU HAVE  
TO BE CONNECTED TO THE INTERNET**

**This index tracks the history of all agency rulemakings from 1993 to the present.  
It includes all rulemaking activities on each chapter of rules  
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